

ISSUE

ANSWER

FACTS

DISCUSSION

A judge may not lend the prestige of judicial office to advance the private interests of . . . others or convey or permit others to convey the impression that they are in a special position to influence the judge.

The purpose of the rule is stated in the amended comment, i.e. that maintaining the prestige of judicial office is necessary to permit the judiciary to function independently. In order to do so, as the comment states:

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others.

The purpose of the meeting between the judge and the MADD representative is unstated. Therefore, there is no indication that the discussion would involve a pending case or seek an advance ruling on the evidentiary value of the alcohol detecting device. A natural assumption is that the representative will want to advise the judge on MADD's position on the seriousness of alcohol-related offenses and the need for imposition of severe sentences in the event of a conviction. That posture is well known, highly publicized and forms a part of the preamble to most legislative acts involving drunk driving laws. Such a general discussion is not improper nor could it be considered as lending the prestige of judicial office to support the private interests of MADD.

B. SCR 60.04(1)(b)

SCR 60.04(1)(b) states in part:

A judge may not be swayed by partisan interests, public clamor or fear of criticism.

Because the representative of MADD will certainly want to discuss the organization's purposes and the fact that each alcohol-related conviction and sentence imposition are reviewed by its members, the judge must keep an open mind. Such a meeting may enhance the judge's understanding of community perspectives related to sentencing in alcohol-related offenses. In addition, the meeting would be an opportunity for the judge to educate the representative on the complexity of judicial decision-making. However, the discussion cannot influence or intimidate the judge in his or her future judicial actions, or give the appearance of doing so.

To avoid giving the impression or appearance that the judge might be swayed, he or she would be well advised to keep the conversation on a general level. Court procedures in processing alcohol-related offenses, the options available to a defendant in the manner of trial, and a general discussion of penalties available upon sentencing would be proper and could not be construed as indicating that the judge was swayed by the private interests of MADD or fearful of criticism. The judge must be careful to avoid taking a position on policies

advocated by MADD.

C. SCR 60.04(1)(g)

SCR 60.04(1)(g) provides in part:

A judge may not initiate, permit, engage in or consider ex parte communications concerning a pending or impending action or proceeding . . . (with certain exceptions not relevant here).

Ex parte communications are not defined by the Code. Other authorities have done so.

Ex parte communications are those that involve fewer than all of the parties who are legally entitled to be present during the discussion of any matter.

JEFFREY M. SHAMAN, ET AL., JUDICIAL
CONDUCT AND ETHICS §5.01 (2nd ed. 1995)

As previously mentioned, the purpose of the proposed meeting was not stated to the judge. Since the Code specifically prohibits ex parte communications, the discussion must be immediately terminated if a pending or impending case is mentioned. It must be made clear to the representative at the beginning of the meeting that ex parte communications are prohibited and the meeting cannot continue if that standard is not observed.

D. General Guidelines

Judges are often contacted by members of special interest groups for in chambers meetings. While this opinion recognizes that, generally, such meetings are not violative of the Code, the Committee recommends the following guidelines to assist judges in deciding whether to honor such requests.

1. Neither the Code of Judicial Conduct nor this opinion mandates that judges must entertain requests for private meetings.

2. The judge would be well advised to inquire as to the purpose of the meeting before deciding whether to grant the request.

3. The judge might consider whether the meeting should include members of the prosecution and defense bar. Frequently, the requested conference involves matters in the criminal branch of court.

4. The request from the special interest group should be in written form so that no misunderstanding could arise, and the judge should confirm the meeting and the ground rules for discussion in writing.

5. The absolute prohibition against ex parte communications must be observed and must be made clear to the requestor before the meeting begins.

6. The judge might consider whether a court reporter should be present during the meeting. That would avoid any future misunderstanding of what transpired during the course of the conference. It would also protect the judge from embarrassment if he or she were later misquoted.

CONCLUSION

The Committee concludes that a judge may, at his or her discretion, meet in chambers with a member of a special interest group provided that:

1. The special interest group is not given any impression that it is in a special position to influence the judge.

2. There is no danger that the judge will be swayed or intimidated by fear of criticism.

3. No ex parte communications are involved.

APPLICABILITY

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60--Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 98-13 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin, this 23rd day of November, 1998.

Thomas H. Barland
Chair